

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CASA DE MARYLAND, INC.,

Plaintiff,

V.

U.S. DEPARTMENT OF HOMELAND
SECURITY and U.S. INTERNAL REVENUE
SERVICE

Defendants.

Civil Action No. _____

December 3, 2008

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, for declaratory and injunctive relief to compel the identification, disclosure and release of agency records improperly withheld from Plaintiff by the U.S. Internal Revenue Service (“IRS”) and the U.S. Department of Homeland Security (“DHS”) and its component agencies, Immigration and Customs Enforcement (“ICE”); Office for Civil Rights and Civil Liberties (“CRCL”); and Office of the Inspector General (“OIG”).

2. Plaintiff seeks to compel the release of records on a matter of public concern, namely, relating to two specific immigration enforcement activities that have resulted in allegations of grave violations of the Fourth and Fifth Amendments to the United States Constitution: a January 23, 2007 raid at the parking lot of a Baltimore, Maryland 7-Eleven convenience store; and the June 30, 2008 raid on the office of Annapolis Painting Services and approximately seventeen homes in the Annapolis, Maryland vicinity. An ICE press release dated

July 30, 2008 indicates that employees of the IRS assisted in the June 30th operation.

3. Plaintiff seeks disclosure of records to shed light on the activities of ICE, the largest investigative arm of the Department of Homeland Security and the largest law enforcement agency in the country, to either confirm or dispel widespread suspicion that it has been operating above the law.

JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to the FOIA, 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. §§ 1331 and 1361.

5. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402(a)(1), as the Plaintiff resides in the District of Maryland.

PARTIES

6. Plaintiff CASA de Maryland, Inc. (“CASA”) is a community-based non-profit organization operating throughout Maryland, with its principal place of business in Silver Spring. CASA’s primary goals are raising public awareness and promoting the rights of individuals in the state of Maryland, particularly the rights of immigrants and Latinos. Through provision of direct services, research and work with local communities, CASA’s staff and volunteers gather information on immigrants’ and Latinos’ rights issues, and disseminate that information through press releases, published reports, and through CASA’s web site, as well as by speaking at conferences, panel discussions, community meetings and informal sessions with local community groups, government officials, and advocacy coalitions.

7. Defendant DHS is the federal agency responsible for enforcing immigration laws. It is an agency of the United States government, within the meaning of 5 U.S.C. § 552(f).

8. ICE is one of the divisions of DHS responsible for enforcing immigration law.

9. CRCL is a component of DHS responsible for reviewing and assessing information concerning abuses of civil rights, civil liberties, and racial profiling by employees and officials of DHS.

10. OIG is responsible for conducting and supervising audits, investigations, and inspections relating to the operations of DHS.

11. Defendant IRS is an agency of the United States government, within the meaning of 5 U.S.C. § 552(f).

STATEMENT OF FACTS

The Arrest of Approximately Twenty-four Individuals on or about January 23, 2007

12. On the morning of January 23, 2007, ICE agents conducted a “sting” operation at the parking lot of a 7-Eleven convenience store in Baltimore, Maryland (hereinafter, “the 7-Eleven raid”).

13. During the operation, ICE agents initially pretended to be employers seeking to hire several of the day laborers who had gathered in the parking lot.

14. Shortly after some of the day laborers indicated their willingness to perform the offered construction work, the ICE agents initially on the scene were joined by several additional ICE agents who arrived in two or three other vehicles.

15. Collectively, the ICE agent immediately ordered all of the Latino men in the parking lot to proceed to one corner of the parking lot and to sit on a curb.

16. The ICE agents did not detain any of the several Caucasian and African-American day laborers present in the 7-Eleven parking lot.

17. An unknown ICE agent ordered two Latino men seated in a vehicle in the parking lot to exit the vehicle and join the other Latino men being detained.

18. An unknown ICE agent also crossed a nearby street and ordered one or more Latino men to join the other Latino men detained in the 7-Eleven parking lot.

19. After detaining them, the ICE agents proceeded to interrogate the men concerning their immigration status, and subsequently arrested twenty-four (24) of them for alleged civil immigration violations.

20. The ICE agents did not interrogate any of the several Caucasian and African-American day laborers present in the 7-Eleven parking lot about their immigration status.

21. Following their arrest, the ICE agents proceeded to transport the arrestees to the ICE Field Office in Baltimore.

22. In transit to the Field Office, one or more of the ICE vehicles stopped on at least two occasions to detentively interrogate at least four Latino men walking on a sidewalk a few blocks from the 7-Eleven about their immigration status, and subsequently arrested them.

23. The ICE agents did not stop and interrogate any Caucasian or African-American pedestrians walking on the sidewalk.

24. Immediately following their arrests, Plaintiff assisted most of the arrested individuals in securing *pro bono* representation for their removal proceedings.

25. Three of the arrestees are still in immigration proceedings, where ICE is alleging they are aliens in this country without authorization. The three men are seeking to suppress any and all evidence obtained in the 7-Eleven raid on the basis of egregious violations of the Fourth Amendment to the U.S. Constitution.

26. Plaintiff's FOIA requests seek information that would assist the victims of the 7-Eleven raid in establishing the illegality of the ICE agents' actions.

27. Soon after the 7-Eleven raid, Gustavo Torres, the Executive Director of the

Plaintiff organization, filed a complaint with ICE regarding the apparent racial profiling of the ICE agents.

28. Senator Barbara Mikulski also sent a letter to DHS Secretary Michael Chertoff, requesting an investigation into the 7-Eleven raid.

29. A DHS representative replied to Senator Mikulski, stating that “this matter was referred to ICE’s Office of Professional Responsibility for appropriate action. The results of this review will be provided to the leadership of ICE, as well as to the DHS’ Office for Civil Rights and Civil Liberties.”

30. The DHS letter to Senator Mikulski also noted that “all employees of DHS are required to comply with the DHS Policy on Racial Profiling, which provides standards to be used by federal law enforcement authorities when conducting a specific investigation.”

31. Information regarding the 7-Eleven raid is also of immediate public concern. Plaintiff seeks to determine whether this operation was carried out in accordance with applicable federal statutes and regulation; the results, if any, of the investigation into the raid; as well as records related to the DHS Policy on Racial Profiling.

Plaintiff’s FOIA Request to ICE Regarding the 7-Eleven Raid

32. By letter to ICE dated September 22, 2008, Plaintiff submitted a FOIA request for various records relating to the 7-Eleven raid and day laborers more generally; ICE’s policies regarding the use of race in law enforcement; as well as records of the ICE Office of Professional Responsibility (“OPR”) concerning complaints received about misconduct by ICE agents and any investigations thereof. Plaintiff also requested expedited processing and a fee waiver.

33. On September 23, 2008, ICE issued a letter acknowledging receipt of the request and assigning it the identification number 2008-FOIA-4136. The letter also stated that ICE was

invoking a 10-day extension to respond to the request, as provided by 5 U.S.C. § 552(a)(6)(B).

34. By separate letter also dated September 23, 2008, ICE informed Plaintiff that the request for expedited processing had been denied.

35. By letter dated October 13, 2008, Plaintiff appealed the denial of expedited processing, explaining that CASA is “primarily engaged in disseminating information” and that there is “an urgency to inform the public about an actual or alleged federal government activity.” 6 C.F.R. § 5.5(d)(1)(i).

36. To date, Plaintiff has received no other correspondence from ICE regarding its 2008-FOIA-4136 request.

37. To date, ICE has not provided any records responsive to Plaintiff’s request, notwithstanding the FOIA’s requirement of an agency response within twenty (20) working days, see 5 U.S.C. § 552(a)(6)(A)(i), plus, if properly invoked in this instance, the 10-day extension provided by 5 U.S.C. § 552(a)(6)(B).

38. Due to ICE’s inadequate response to the FOIA request, Plaintiff has automatically exhausted the applicable administrative remedies with respect to its FOIA request to ICE. *See* 5 U.S.C. § 552(a)(6)(C)(i).

39. ICE has wrongfully withheld the requested records from Plaintiff.

Plaintiff’s FOIA Request to OIG Regarding the 7-Eleven Raid

40. By letter to the Department of Homeland Security’s Office of the Inspector General (“OIG”) dated September 23, 2008, Plaintiff submitted a FOIA request for various records relating to the 7-Eleven raid, as well as records related to complaints OIG had received for any activity involving ICE agents that had occurred at least in part in the state of Maryland. Plaintiff also requested expedited processing and a fee waiver.

41. By letter dated September 25, 2008, OIG acknowledged receipt of the FOIA request and assigned it identification number, 2008-183. The letter also denied Plaintiff's request for expedited processing.

42. On October 7, 2008, Plaintiff appealed the OIG's decision to deny the request for expedited processing.

43. On October 23, 2008, an OIG employee contacted Plaintiff via email about the request, asking if Plaintiff would be willing to narrow two items of its request, relating to complaints and investigation of ICE misconduct.

44. By email dated October 30, 2008, Plaintiff agreed to do so.

45. By letter dated November 5, 2008, OIG released to Plaintiff parts of fifteen (15) pages of documents.

46. Parts of each of the fifteen documents were wrongfully redacted pursuant to FOIA exemptions 5 U.S.C. §§ 552(b)(2), (b)(6), and/or (b)(7)(C).

47. Additionally, OIG referred four (4) pages of documents responsive to Plaintiff's request to ICE and two (2) pages to CRCL.

48. Although the November 5, 2008 letter stated that OIG had performed an electronic search of its "investigative indices" using "various search terms" mentioned in Plaintiff's request letter, it did not provide any additional details concerning its search.

49. By letter dated November 21, 2008, Plaintiff received a letter from ICE, apparently regarding the four pages of documents referred to it by OIG. Included with the letter were four pages of partially redacted documents responsive to Plaintiff's request.

50. Parts of each of the four documents were wrongfully redacted pursuant to FOIA exemptions 5 U.S.C. §§ 552(b)(2), (b)(5), (b)(6), and/or (b)(7)(C).

51. To date, Plaintiff has received no correspondence from CRCL regarding the two pages allegedly referred to it by OIG.

52. To date, Plaintiff has received no further correspondence from OIG regarding its FOIA request.

53. Due to OIG's inadequate response to the FOIA request, Plaintiff has automatically exhausted the applicable administrative remedies with respect to its FOIA request to OIG. See 5 U.S.C. § 552(a)(6)(C)(i).

54. OIG has wrongfully withheld the requested records from Plaintiff.

Plaintiff's FOIA Request to CRCL Regarding the 7-Eleven Raid

55. By letter to the Department of Homeland Security's Office of Civil Rights and Civil Liberties dated September 23, 2008, Plaintiff submitted a FOIA request for various records relating to the 7-Eleven raid, as well as records related to complaints CRCL had received regarding ICE agents. Plaintiff also requested expedited processing and a fee waiver.

56. To date, Plaintiff has received no correspondence from CRCL regarding its FOIA request.

57. To date, CRCL has not provided any records responsive to Plaintiff's request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days, see 5 U.S.C. § 552(a)(6)(A)(i).

58. Due to CRCL's inadequate response to the FOIA request, Plaintiff has automatically exhausted the applicable administrative remedies with respect to its FOIA request to CRCL. See 5 U.S.C. § 552(a)(6)(C)(i).

59. CRCL has wrongfully withheld the requested records from Plaintiff.

The Arrest of Approximately Forty-Six Individuals on or about June 30, 2008

60. On June 30, 2008, approximately seventy-five (75) ICE agents led an immigration raid on the offices of an area employer and approximately seventeen (17) homes in and around Annapolis, Maryland (hereinafter, “the Annapolis raid”).

61. In addition to the arrests of approximately forty-six (46) individuals for alleged civil immigration violations, the Annapolis raid resulted in widespread allegations of grave constitutional rights’ violations by the law enforcement officers involved.

62. Allegations of ICE misconduct include forcefully entering private residences without warrants, exigent circumstances, or the consent of the occupants; arresting and interrogating individuals without reasonable suspicion or probable cause of criminal activity or violations of immigration law; engaging in racial profiling; failing to advise arrestees of their rights during custodial interrogation regarding an ongoing criminal investigation; leaving a child under the age of two in a home alone for several hours; telling detainees who requested to remain silent and speak to an attorney that they have no such rights; and needlessly and maliciously destroying property.

63. Information provided to the media indicated that approximately fifty (50) officers of the Anne Arundel County Police Department participated in the raid.

64. An ICE press release dated July 30, 2008 indicates that ICE also received assistance with the operation from, *inter alia*, the Internal Revenue Service (“IRS”); the Annapolis Police Department; the Frederick County Sheriff’s Office; and the Baltimore Police Department.

65. A large number of the approximately forty-six individuals arrested in the Annapolis raid are currently in immigration removal proceedings, where ICE is alleging that they

are aliens in this country without legal authorization.

66. Immediately following their arrests, Plaintiff assisted most of the arrested individuals in securing *pro bono* representation for their removal proceedings.

67. Upon information and belief, all or nearly all of those currently in removal proceedings will seek to suppress any and all evidence obtained in the Annapolis raid on the basis of egregious violations of the Fourth and Fifth Amendments to the U.S. Constitution.

68. Plaintiff's FOIA requests seek information that would assist the victims of the Annapolis raid in establishing the illegality of the ICE agents' actions.

69. Information regarding the Annapolis raid is also of immediate public concern more generally. Plaintiff seeks to determine whether this operation was carried out in accordance with applicable federal, state, and local statutes and regulation; as well as what role the IRS and the assisting local law enforcement agencies played in the raid.

Plaintiff's FOIA Request to ICE Regarding the Annapolis Raid

70. By letter to ICE dated September 17, 2008, Plaintiff submitted a FOIA request for various records relating to the Annapolis raid, as well as records relating to communications between ICE and the other governmental agencies involved in the operation. Plaintiff also requested expedited processing and a fee waiver.

71. On September 22, 2008 ICE issued a letter acknowledging receipt of the request on September 17, 2008, and assigning the request an identification number, 2008-FOIA-4135. The letter also stated that ICE was invoking a 10-day extension to respond to the request, as provided by 5 U.S.C. § 552(a)(6)(B).

72. By separate letter also dated September 22, 2008, ICE informed Plaintiff that the request for expedited processing had been denied.

73. By letter dated October 13, 2008, Plaintiff appealed the denial of expedited processing, explaining that CASA is “primarily engaged in disseminating information” and that there is “an urgency to inform the public about an actual or alleged federal government activity.” 6 C.F.R. § 5.5(d)(1)(i).

74. By letter dated November 4, 2008, ICE informed Plaintiff that although an unspecified number of records responsive to its FOIA request had been revealed, all of the records were being withheld pursuant to 5 U.S.C. § 552(b)(7)(A).

75. The November 4, 2008 letter indicated that it was the “final response” to Plaintiff’s 2008-FOIA-4135 request.

76. To date, Plaintiff has received no other correspondence from ICE regarding its FOIA request.

77. To date, ICE has not provided any records responsive to Plaintiff’s request, notwithstanding the FOIA’s requirement of an agency response within twenty (20) working days, see 5 U.S.C. § 552(a)(6)(A)(i), plus, if properly invoked in this instance, the 10-day extension provided by 5 U.S.C. § 552(a)(6)(B).

78. Due to ICE’s inadequate response to the FOIA request, Plaintiff has automatically exhausted the applicable administrative remedies with respect to its FOIA request to ICE. *See* 5 U.S.C. § 552(a)(6)(C)(i).

79. ICE has wrongfully withheld the requested records from Plaintiff.

Plaintiff’s FOIA Request to IRS Regarding the Annapolis Raid

80. By letter to IRS dated September 17, 2008, Plaintiff submitted a FOIA request for various records relating to the arrests that took place on June 30, 2008. Plaintiff also requested expedited processing and a fee waiver.

81. On September 24, 2008, IRS issued a letter acknowledging receipt of the FOIA request and assigning the request an identification number, 04-2008-01998. The letter also stated that “[t]ax records are confidential” and would not be released without the written consents of the individuals and business named in the request.

82. By letter dated October 7, 2008, Plaintiff replied, noting that “a great deal of its request involves records that would not be confidential tax records” and Defendant’s obligation under 5 U.S.C. § 552(b) to release “[a]ny reasonably segregable portion” of records “after deletion of the portions which are exempt” under FOIA.

83. By letter dated November 7, 2008, IRS essentially repeated its letter of September 24, 2008, stating erroneously that “to constitute a valid request under the [FOIA] you must send written consents authorizing Internal Revenue Service to disclose the confidential tax records of the requested individual and businesses.”

84. To date, Plaintiff has received no other correspondence from IRS regarding its FOIA request.

85. To date, IRS has not provided any records responsive to the Plaintiff’s request, notwithstanding the FOIA’s requirement of an agency response within twenty (20) working days. See 5 U.S.C. § 552(a)(6)(A)(i).

86. Due to IRS’ inadequate response to the FOIA request, Plaintiff has automatically exhausted the applicable administrative remedies with respect to its FOIA request to the IRS. See 5 U.S.C. § 552(a)(6)(C)(i).

87. IRS has wrongfully withheld the requested records from Plaintiff.

**FIRST CLAIM FOR RELIEF:
Defendant DHS Failed to Disclose and Release Records
Responsive to Plaintiff's FOIA Request**

88. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 87 as if repeated and reincorporated herein.

89. DHS has violated Plaintiff's right to DHS records under 5 U.S.C. § 552.

**SECOND CLAIM FOR RELIEF:
Defendant DHS Failed to Affirmatively Disclose and Release Records
Responsive to Plaintiff's FOIA Request**

90. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 89 as if repeated and reincorporated herein.

91. DHS' failure to make its records available to the public violates 5 U.S.C. § 552(a)(1)(2).

**THIRD CLAIM FOR RELIEF:
Defendant IRS Failed to Disclose and Release Records
Responsive to Plaintiff's FOIA Request**

92. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 91 as if repeated and reincorporated herein.

93. IRS has violated Plaintiff's rights to IRS' records under 5 U.S.C. § 552.

**FOURTH CLAIM FOR RELIEF:
Defendant IRS Failed to Affirmatively Disclose and Release Records
Responsive to Plaintiff's FOIA Request**

94. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 93 as if repeated and reincorporated herein.

95. IRS's failure to make its records available to the public violates 5 U.S.C. § 552(a)(1)(2).

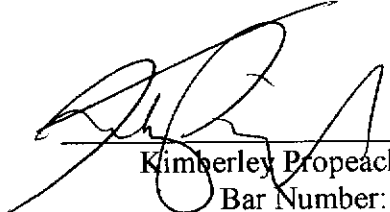
REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Defendants to disclose the requested records in their entireties and to make copies available to Plaintiff;
3. Provide for expeditious proceedings in this action;
4. Award Plaintiff costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
5. Grant any other relief the Court deems appropriate.

Dated: Dec 3, 2008
Silver Spring, Maryland

Respectfully submitted,



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